

E-Filed: 11/21/2013

NOT FOR CITATION

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

BANK OF MONTREAL, as Administrative
Agent,

No. 11-mc-80133 EJD (HRL)

Plaintiff,

**ORDER GRANTING MOTION TO
EXTEND DURATION OF ORAP LIEN**

v.

[Re: Docket No. 84]

SK FOODS, LLC, FREDERICK SCOTT
SALYER, Individually and as Trustee for the
Scott Salyer Revocable Trust,

Defendants.

Bank of Montreal (“BMO”) initiated this action to register a \$128 million judgment against SK Foods, LLC entered in the Northern District of Illinois. The judgment was amended to add Federal Scott Salyer as a defendant, and the court ordered Salyer to appear for judgment debtor examination. BMO now moves to extend the duration of the lien created by service of the order to appear (“ORAP lien”). Defendants have not opposed the motion. Upon consideration of the moving papers and the arguments of BMO’s counsel at the hearing on November 19, 2013, the Court grants BMO’s motion to extend the duration of the ORAP lien for one year.

“In aid of the judgment or execution, the judgment creditor . . . may obtain discovery from . . . the judgment debtor . . . as provided . . . by the procedure of the state where the court is located.” Fed. R. Civ. P. 69(a)(2). California procedure provides for the examination of judgment debtors. Cal. Civ. P. § 708.110. “Service of [an order to appear for a judgment debtor examination] creates a

1 lien on the personal property of the judgment debtor for a period of one year from the date of the
2 order unless extended or sooner terminated by the court.” Cal. Civ. P. § 708.110(d).

3 BMO served Salyer in October 2012 and an exam was held soon after. However, Salyer did
4 not answer any questions during the examination, instead asserting his Fifth Amendment privilege
5 against self-incrimination based on his pending criminal sentencing proceedings. Salyer was
6 sentenced in April and has since been incarcerated in prison. BMO asserts that its access to Salyer
7 has been further restricted due to his placement in a rehabilitation program within the prison.

8 BMO’s ability to collect its judgment during the presumptive one-year duration of the ORAP
9 lien has been significantly hindered by Salyer’s refusal to answer questions during the judgment
10 debtor exam and his subsequent imprisonment. Accordingly, good cause exists to extend the
11 duration of the ORAP lien for an additional year.

12 **IT IS SO ORDERED.**

13 Dated: November 20, 2013

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16 HOWARD R. LLOYD
17 UNITED STATES MAGISTRATE JUDGE
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